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Bill Lockyer, Attorney General of the State of California

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

**PEOPLE OF THE STATE OF CALIFORNIA EX  
REL. BILL LOCKYER, ATTORNEY GENERAL  
OF THE STATE OF CALIFORNIA,**

Plaintiff,

**v.**

**POWEREX CORPORATION, a Canadian  
Corporation, d.b.a. POWEREX ENERGY  
CORPORATION; PUBLIC SERVICE COMPANY  
OF NEW MEXICO; and DOES 1-100,**

Defendants.

**Case No.  
COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiffs, the People of the State of California, by and through Bill Lockyer, Attorney General of the State of California, are informed and believe and thereupon allege the following:

**INTRODUCTION**

1. Plaintiffs bring this action to recover and obtain hundreds of millions of dollars in damages for injuries caused by violation of California's antitrust law, the Cartwright Act (Bus. & Prof. Code § 16720 *et seq.*), by Powerex Corporation (formerly known as British Columbia Power

Exchange Corporation and doing business in California as Powerex Energy Corporation, referred to herein as “Powerex”) and Public Service Company of New Mexico (“PNM”) (collectively, “Defendants”). Defendants, acting in concert with one another and another co-conspirator, the Colorado River Commission (“CRC”), manipulated the market for electricity in California during California’s energy crisis, between May 2000 and June 2001 (the “Relevant Period”), in order to restrain trade and to fix and maintain the price for electricity in California at artificially high levels. The market manipulation by Powerex, PNM, and CRC violated applicable law and, in fact, did artificially raise the price of electricity within the State.

2. The conspiracy was accomplished through various actions of Powerex, PNM, and CRC in connection to their electricity trading activities that were intended to and did manipulate the price of electricity in California. These actions include, but are not limited to, the purchase of electricity by Powerex in California and, with the help of PNM and CRC, its withdrawal from, and subsequent re-importation into, the California market. This manipulation of the supply of electricity caused the price to rise, and Powerex was able to sell it back into the California market at these higher prices. Because of the conduct of Powerex, PNM, and CRC, the People suffered artificially increased electricity prices, supply disruptions, and other consequences of the market distortions created by the Powerex, PNM, and CRC.

3. Plaintiffs therefore bring this action under California antitrust law to recover damages and treble damages.

## PARTIES

### A. Plaintiffs

4. Bill Lockyer is the Attorney General of the State of California and is its chief law officer (California Constitution, Article 5, § 13). Business and Professions Code section 16760 expressly authorizes the Attorney General to bring suit to enjoin and remedy violations of the Cartwright Act (Bus. & Prof. Code § 16700 *et seq.*) on behalf of the State of California and its citizens.

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1 **B. Defendants**

2           5. Defendant Powerex is a Canadian corporation headquartered in Vancouver, British  
3 Columbia, Canada. Powerex is the wholly-owned power marketing subsidiary of BC Hydro,  
4 Canada's third largest electric utility. During the Relevant Period, Powerex was a marketer of  
5 wholesale energy products and services and was engaged in energy merchant and commodity market  
6 businesses and trading activities in western Canada and the western United States, including  
7 California.

8           6. Defendant PNM is a New Mexico corporation with its headquarters in Albuquerque,  
9 New Mexico. PNM markets electric services to retail customers in New Mexico and, during the  
10 Relevant Period, generated and marketed electricity in the Western United States, including  
11 California.

12           7. The true names, identities, and capacities of the Defendants sued herein as Does 1  
13 through 50 are unknown to Plaintiffs, who therefore sue these Defendants by such fictitious names.  
14 Plaintiffs will seek leave of this Court to amend this Complaint to allege their true names, identities,  
15 and capacities when ascertained. Plaintiffs allege that during the Relevant Period each of the  
16 fictitiously named Defendants was an agent, employee, subsidiary, or affiliate of Powerex or PNM  
17 and was responsible in some manner for the unlawful conduct alleged and its effects, and that their  
18 acts, conduct, and omissions directly caused injuries to Plaintiffs.

19           8. The true names, identities, and capacities of the Defendants sued herein as Does 51  
20 through 100 are unknown to Plaintiffs, who therefore sue these Defendants by such fictitious names.  
21 Plaintiffs will seek leave of this Court to amend this Complaint to allege their true names, identities,  
22 and capacities when ascertained. Plaintiffs allege that during the Relevant Period each of the  
23 fictitiously named Defendants conspired with Powerex to manipulate the supply of electricity, fix  
24 and maintain prices, and restrain trade in the market for electricity in California.

25 **C. Other Conspirator**

26           9. CRC is a political subdivision of the State of Nevada with its headquarters in  
27 Las Vegas, Nevada. CRC generates hydro electricity on the Colorado River and, during the  
28 Relevant Period, marketed electricity in the Western United States, including California. CRC is

1 not named as a defendant in this action.

2 **JURISDICTION**

3 10. This Court has jurisdiction to hear the claims alleged in this Complaint and is a court  
4 of competent jurisdiction to grant the relief requested.

5 11. This Court has jurisdiction over Defendant Powerex because Powerex is a Canadian  
6 corporation registered with the California Secretary of State to conduct business in California and  
7 did conduct business in California by engaging in the offer, sale, and purchase of electricity in the  
8 State of California and/or the control area of the California Independent System Operator (“ISO”),  
9 and because Powerex otherwise has sufficient minimum contacts in California, to render the exercise  
10 of jurisdiction over it by this Court consistent with traditional notions of fair play and substantial  
11 justice.

12 12. This Court has jurisdiction over Defendant PNM because PNM conducted business  
13 in California by engaging in the offer, sale, and purchase of electricity in the State of California  
14 and/or the control area of the ISO and because PNM otherwise has sufficient minimum contacts in  
15 California, to render the exercise of jurisdiction over it by this Court consistent with traditional  
16 notions of fair play and substantial justice.

17 **VENUE**

18 13. Venue is proper in this Court because the causes of action arise in the County of  
19 Sacramento where some of the violations of law have occurred.

20 **FACTUAL BACKGROUND**

21 **A. Deregulation of California’s Electric Generation Market**

22 14. Prior to restructuring of the electricity industry in California, the State’s major  
23 investor-owned utilities (“IOUs”), namely Pacific Gas & Electric Company, (“PG&E”), Southern  
24 California Edison (“SCE”), and San Diego Gas & Electric Company (“SDG&E”), provided bundled  
25 services for electricity (including generation, transmission, and distribution) to the majority of  
26 customers in the State. In September 1996, the California Legislature enacted Assembly Bill 1890  
27 (“AB 1890”), with the goal of introducing competition in the generation and sale of electricity, at  
28 both the wholesale and retail levels. In order to promote competition, AB 1890 encouraged the

IOUs to divest themselves of a significant portion of their generating capacity.

**B. The ISO and PX Markets**

15. AB 1890 also established two new institutions: The ISO and the Power Exchange (“PX”).

16. The ISO is a not-for-profit corporation established through California’s deregulation legislation and was established to operate the high-voltage transmission grid serving most of the State. The area encompassing this transmission grid is known as the ISO control area. The ISO is responsible for all real-time operations, such as continually balancing generation and load and managing congestion on the transmission system it controls.

17. The PX was established to operate two auction-style markets for the purchase and sale of electricity for delivery during the same or next day. These were the “day-ahead” and “day-of” markets. The intent of the deregulation plan was that 95 percent of the power needed to serve customers in the ISO control area would be sold and purchased through the PX markets. In the day-ahead and day-of markets, the PX established a single market clearing price that all sellers collected and all buyers paid for power delivered in each hour across the entire ISO control area.

18. During the Relevant Period, ISO administered a variety of auction markets for the purpose of procuring the electricity necessary to operate the transmission system reliably, including an energy market to procure the power needed to continuously match the amount of power being supplied to the grid with the amount of energy being demanded by customers. This market is known as the “real-time” energy market or the “imbalance” energy market.

19. Generators or marketers of energy, such as Defendants, who wished to participate in the PX and ISO energy markets were required to do so through a scheduling coordinator. A scheduling coordinator is an entity authorized to submit energy bids and schedules to the PX and ISO on behalf of electricity suppliers and purchasers. A generator or marketer could serve as its own scheduling coordinator or use a third party to act as its scheduling coordinator. The PX was also considered to be a scheduling coordinator but with restricted capabilities. Many scheduling coordinators performed several functions, including coordinating many generators and loads; negotiating generator and load changes with clients; negotiating bilateral contracts with or between

clients; aggregating contracts between market participants; acting as energy service provider; owning, contracting for, or brokering generation; bundling generation and load; acting as the sole agent to the ISO; and submitting schedules and bids for electricity and ancillary services.

20. The IOUs were required by law to sell all of the output from the generating units that they had not previously divested into markets administered by the PX and ISO and to purchase all of their energy and capacity requirements from those PX and ISO markets. As a result, the PX was the largest scheduling coordinator in California, representing at times approximately 90 percent of the load served by the ISO grid.

21. As a scheduling coordinator, the PX was required to submit a balanced schedule of load and generation to the ISO for the following day. In order to maintain balance on the transmission grid, the ISO would dispatch power from sellers that submitted successful bids in the real-time, imbalance energy market or ancillary services markets. If there were insufficient bids in the ISO real-time market to meet customer demand, the ISO, as a last resort, would purchase energy “out-of-market” in order to procure the resources necessary to operate the system.

22. Neither the ISO nor the PX purchased or sold energy for their own accounts or benefit. Rather, they served as “market-makers” or clearinghouses to facilitate the sale and purchase of wholesale power by market participants such as Defendants. In markets administered by the PX and ISO, sellers submitted bids specifying the amount of electricity and/or capacity they wished to sell and the price at which they were offering to sell. The auction operator ranked all bids in merit order, (i.e., from lowest to highest price) and then selected all of the bids it needed in order to meet the demand in a given interval. The bid submitted by the highest priced unit selected by the ISO set a single “market-clearing price” that all buyers paid, and all sellers received.

23. During the Relevant Period, Powerex was a scheduling coordinator authorized to submit bids in the PX and ISO markets to purchase and sell energy. In its capacity as a scheduling coordinator, Powerex also submitted schedules to the PX and ISO detailing generation and load information for bilateral energy transactions it purportedly negotiated on behalf of itself with the other Defendants. Powerex also communicated and interacted with the ISO regularly, including during real-time and system emergencies, regarding scheduling and transmission issues or to

negotiate out-of-market sales with the ISO to help balance the grid.

**C. The Breakdown of the Market, Skyrocketing Electricity Prices, and Rolling Blackouts**

24. In May 2000, the price of wholesale power began to quickly rise to historically unprecedented levels in California and did not begin declining until June 2001 (the period referred to as “the Relevant Period”).

25. During the Relevant Period, buyers of wholesale power incurred massive losses. The two largest IOUs, SCE and PG&E, incurred enormous debts and, as a result, defaulted on payments to both the PX and the ISO. PG&E filed for bankruptcy in April 2001, and SCE teetered on the brink of bankruptcy. On January 29, 2001, the PX suspended trading in its markets, effectively ceasing its operations, and declared bankruptcy on March 9, 2001.

26. On January 17, 2001, Governor Davis declared a state of emergency in order to ensure that a continuous supply of energy was available in California. Governor Davis authorized the State, through the California Department of Water Resources (“DWR”), to purchase electricity to protect health, safety, and vital economic interests of California citizens and businesses. From January through October 2001, DWR spent \$10 billion buying electricity on a short-term basis from suppliers, including Powerex. All told, wholesale power buyers paid approximately \$27 billion in each of 2000 and 2001 for wholesale power, compared to \$7 billion in 1999.

27. Those costs were passed on to Plaintiffs. Even four years after the start of the crisis, retail rates in California remain among the highest in the nation.

28. The crisis also posed a serious threat to the safety and reliability of the high voltage transmission grid serving the State, which was subjected to extended periods of ISO-declared system emergencies in which operating reserves fell below system requirements. The ISO declared numerous Stage 3 system emergencies (the highest level of system emergency) because actual or anticipated operating reserves were less than or equal to one and a half percent (1½%) of projected peak demand. For the first time ever in California history, businesses and residents in the State were subjected to rolling blackouts.

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**UNLAWFUL CONDUCT**

29. During the Relevant Period, Defendants and CRC undertook several steps in a concerted, anticompetitive scheme to manipulate and control the price of electricity in California. These steps were undertaken with the intent to achieve supercompetitive profits from the market for electricity in California. Defendants did, in fact, make supercompetitive profits from their market manipulation.

30. As a marketer of energy and a scheduling coordinator, Powerex sold electricity into and purchased electricity from the California markets. Powerex operated in all of the organized spot markets, including day-ahead, day-of, real-time, and ancillary services. Powerex made tens of thousands of electricity transactions in those markets starting in approximately 1998 and continuing through to the present.

31. During the Relevant Period, Powerex, PNM, and CRC engaged in a manipulative trading scheme known as “ricochet” or “megawatt laundering” designed to evade the price cap in the ISO’s real-time, imbalance energy market. The ISO had a practice of paying prices above its cap for power imported from sources located outside the State when supplies bid into the real-time market were insufficient to meet demand. Such sales, known as “out-of-market” or “OOM” sales, were completed outside the centralized, imbalance energy market.

32. In the ricochet transactions, Powerex purchased energy in the PX day-ahead or day-of market, exported it to PNM and CRC and then imported it back into the ISO control area through an OOM sale to the ISO at a greatly inflated price. Through this strategy, Powerex willfully and falsely represented to the ISO that the energy it sold was an OOM in order to avoid the price caps. The ricochet transactions were made under written agreements between Powerex and each of the other conspirators, PNM and CRC.

33. During the Relevant Period, Powerex, PNM, and CRC engaged in numerous ricochet transactions. Between May 2000 and October 2000, Powerex, PNM, and CRC exported and re-imported in the same hour at least 158,622 MWh during at least 901 hours. Between October 2000 and January 2001, Powerex, PNM, and CRC exported and re-imported in the same hour at least 184,169 MWh during at least 1,107 hours. From January 2001 to June 2001, Powerex, PNM, and



1 CRC exported and re-imported during the same hour at least 463,734 MWh during at least 2,016  
2 hours.

3 **CAUSATION AND DAMAGES**

4 34. As a result of the manipulation by Powerex, PNM, and CRC, the prices of electricity  
5 in California increased significantly. As a direct result of this manipulation, California customers  
6 were overcharged over a billion dollars during the Relevant Period.

7 **FIRST CAUSE OF ACTION**  
8 **Conspiracy to Restrain Trade in Violation of the Cartwright Act**  
9 **(Business and Professions Code § 16720 *et seq.*)**

10 35. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1  
11 through 34 as if fully set forth here.

12 36. At all relevant times, Defendants illegally combined with the purpose of restraining  
13 trade in the market for electricity in California in violation of the Cartwright Act.

14 37. The specific actions of the Defendants in furtherance of their illegal conspiracy  
15 include, but are not limited to:

16 a. entering into a series of anti-competitive agreements or arrangements designed  
17 to establish a market structure conducive to and supportive of restraint of trade;

18 b. engaging in a series of ricochet trades with the intent and effect of limiting the  
19 supply and increasing the price of electricity in California;

20 c. engaging in a series of ricochet trades in order to fix, control, and establish the  
21 price of electricity in California;

22 d. misrepresenting sales of power to the ISO as “imports,” and collecting payment  
23 for “out-of-market” sales when in fact the power originated in California in order to affect the price  
24 of such power; and

25 e. pooling, combining, and uniting their interests in the sale and transportation of  
26 electricity so as to affect its price.

27 38. The conspiracy caused disruptions in the ISO grid, power shortages, and higher prices  
28 during the Relevant Period. In consequence of these acts, these higher prices for electricity were  
ultimately passed to California consumers.

39. As a direct and proximate result of the unlawful actions of Defendants, Plaintiffs have been damaged in a sum according to proof. These damages are subject to trebling.

40. As a further direct and legal result of the illegal actions of Defendants, Plaintiffs were required to act in the protection of their interests by filing this action and have incurred attorneys' fees, costs, and other expenses according to proof.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief against Defendants as follows:

- A. That this Court award actual and treble damages according to proof;
- B. That this Court award pre-judgment and post-judgment interest fees;
- C. That this Court award attorneys' fees, costs, and other expenses according to proof;
- and
- D. That this Court grant such other relief as it may deem just and proper.

### DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury.

DATED: May 18, 2005

Respectfully submitted,

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**TOM GREENE**  
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